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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,871	01/29/2007	Patrick Lewis Blott	SMNPH.005APC	6837

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EXAMINER

HAWTHORNE, OPHELIA ALTHEA

ART UNIT	PAPER NUMBER
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3772

NOTIFICATION DATE	DELIVERY MODE
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04/29/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/575,871	Applicant(s) BLOTT ET AL.	
	Examiner OPHELIA HAWTHORNE	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 8 AND 10 - 43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 - 43 is/are allowed.
- 6) ☒ Claim(s) 1 - 8 AND 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04-01-2009 AND 04-01-2009 AND 04-17-2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03-13-2010 AND 12-08-2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/08/09 has been entered. Currently, claims 1 – 8 and 10 – 43 are pending in the instant application. Claim 9 have been cancelled.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 – 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swanbeck (WO84/01904). With respect to claim 1, Swanbeck substantially discloses an apparatus (fig. 1) for cleansing wounds, comprising a conformable wound dressing; bandage ([page 1], paragraph 1) comprising a backing layer or suction cup (10) which is capable of forming a relatively fluid-tight seal over at least a portion of a wound ([page 1], paragraph 2) and further comprising: cleansing means or sterilizing filter (14) for selectively removing materials that are deleterious to wound healing from wound exudate, ([page 1], paragraphs 2 - 3) in conjunction with the suction cup intersistial fluid is sucked out from the wound and facilitates blood components are transported to the wound; and a moving device or pump (13) for moving wound exudate from the wound and to the cleansing means or filter (14) and for moving cleansed wound exudate from the cleansing means back to the wound. Swanbeck substantially describe the invention as claimed, however, Swanbeck did not explicitly disclose the cleansing means positioned between the wound and the backing layer. Swanbeck however, teaches the sterilizing filter (14) may be placed between the suction cup (10) and the pump (13). It is clear Swanbeck contemplated various places the sterilizing filter can be positioned that work equally well. At the time of the it would have been obvious to one of obvious to one of ordinary skill in the art to positioned the cleansing means or sterilizing filter between the wound and the backing layer, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPG 70.

With respect to claim 2, Swanbeck discloses wherein the cleansing means is a single-phase system (fig. 1) in which fluid is moved through the cleansing means, wherein the fluid is at least one of wound exudate and irrigant, at least a portion of which fluid passes into, through and out of the cleansing means back to the wound bed as set forth in the abstract.

With respect to claim 3, Swanbeck discloses the cleansing means is a multiple-phase system comprising a chamber or cup (15) containing a cleansing fluid separated from the wound exudate by a permeable integer, and the cleansing fluid is moved through the cleansing means by the moving device or pump (13) as set forth on page 3.

With respect to claim 4, Swanbeck discloses the apparatus is operated as a circulating system, in which fluid passes through the cleansing means one or more times in only one direction as shown in figure 1 and as set forth on page 3.

With respect to claim 5, Swanbeck discloses wherein the apparatus is operated as a reversing system such that fluid passes through the cleansing means at least once in each of two opposing directions (fig. 1).

With respect to claim 6, Swanbeck discloses the cleansing fluid is the only fluid moved through the cleansing means as set forth on page 4.

With respect to claim 7, Swanbeck discloses the cleansing fluid, and fluid comprising wound exudate are moved through the cleansing means as set forth on page 4.

With respect to claim 8, Swanbeck discloses the permeable integer is selectively permeable to materials deleterious to wound healing in the wound exudate. The claim

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limitation “the permeable integer is selectively permeable to materials deleterious to wound healing in the wound exudates” is being treated as a functional recitation. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function, because apparatus claims cover what a device is, not what a device does. The sterilizing filter of Swanbeck is capable of functioning as a selectively permeable integer. (Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990)). Thus, if a prior art structure is capable of performing the intended use as recited in the preamble, or elsewhere in a claim, then it meets the claim.

With respect to claim 10, Swanbeck discloses a method of treating wounds to promote wound healing using the apparatus for cleansing wounds of claim 1.

Allowable Subject Matter

3. Claims 11 – 43 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OPHELIA HAWTHORNE whose telephone number is (571)270-3860. The examiner can normally be reached on Monday - Friday, 7:30 AM - 5:00 PM, EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ophelia Hawthorne/
Examiner, Art Unit 3772

/Kim M. Lewis/
Primary Examiner, AU 3772